

and administrative services, such as transportation or guard services.

(g) Thus, State member banks generally may rely on the Act to justify investment only in a corporation that is engaged solely in performing one or more of the services contained in the definition of *bank services* in section 1(b), or a service similar to one of those services, and only if those services are provided solely to banks. Investment in a corporation providing any other services, such as the type of services described in the above quotation from the Act's legislative history, generally is not permitted on the basis of this Act, unless such services are legitimately incidental to the provision of *bank services* by that corporation.

(h) Since the notification required by section 5 of the Act, as amended, also is based on the provision of *bank services*, such notification need only be provided with regard to the provision of one or more of the services enumerated in section 1(b) of the Act or a service similar to one of those services.

[44 FR 12969, Mar. 9, 1979]

§ 250.302 Applicability of Bank Service Corporation Act to bank credit card service organization.

Summary. Although a non-profit, no-stock service organization in which no bank has made an investment is not a *bank service corporation* as defined in the Bank Service Corporation Act, that organization's credit card servicing activities are *bank services* as defined in the Act and thus subject to the notification requirement of section 5 of the Act.

Text. (a) The Board of Governors has considered whether the Bank Service Corporation Act (12 U.S.C. 1861–1865), is applicable where a bank credit card plan of a State member bank and other banks used the facilities of a non-profit, no-stock service organization.

(b) The functions of the service organization include the following: (1) Performing cardholder accounting for participating banks; (2) developing information concerning each credit card and holder, including such holder's current balance owing to the card issuing bank and the amount of such balance that is delinquent; (3) assisting in procedures relating to the presentation and settle-

ment of drafts and credit memoranda; (4) developing procedures relating to credit card security control; (5) upon telephonic request, advising merchants and participating banks respecting credit authorizations above certain specified limits; and (6) compiling lists of participating merchants.

(c) The Board expressed the view that because the service organization has no stock and the State member bank does not otherwise *invest* therein by "the making of a loan, or otherwise, except a payment for rent earned, goods sold and delivered, or services rendered prior to the making of such payment" (section 1(d) of the Act), the service organization is not a "bank service corporation" within the meaning of section 1(c) of the Act.

(d) However, the Board concluded that the functions described above do constitute *bank services* as defined in section 1(b) of the Act. Accordingly, the State member bank is required to notify the Board (through the appropriate Federal Reserve Bank) of the performance of the services for the bank in accordance with section 5 of the Act.

[44 FR 12970, Mar. 9, 1979]

INTERPRETATIONS OF SECTION 32 OF THE GLASS-STEAGALL ACT

§ 250.400 Service of open-end investment company.

An open-end investment company is defined in section 5(a)(1) of the Investment Company Act of 1940 as a company "which is offering for sale or has outstanding any redeemable security of which it is the issuer." Section 2(a)(31) of said act provides that a *redeemable security* means "any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer or to a person designated by the issuer, is entitled (whether absolutely or only out of surplus) to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof."

It is customary for such companies to have but one class of securities, namely, capital stock, and it is apparent that the more or less continued process of redemption of the stock issued by

such a company would restrict and contract its activities if it did not continue to issue its stock. Thus, the issuance and sale of its stock is essential to the maintenance of the company's size and to the continuance of operations without substantial contraction, and therefore the issue and sale of its stock constitutes one of the primary activities of such a company.

Accordingly, it is the opinion of the Board that if such a company is issuing or offering its redeemable stock for sale, it is "primarily engaged in the issue * * * public sale, or distribution, * * * of securities" and that section 32 of the Banking Act of 1933, as amended, prohibits an officer, director or employee of any such company from serving at the same time as an officer, director or employee of any member bank. It is the Board's view that this is true even though the shares are sold to the public through independent organizations with the result that the investment company does not derive any direct profit from the sales.

If, however, the company has ceased to issue or offer any of its stock for sale, the company would not be engaged in the issue or distribution of its stock, and, therefore, the prohibition contained in section 32 would be inapplicable unless the company were primarily engaged in the underwriting, public sale or distribution of securities other than its own stock.

[16 FR 4963, May 26, 1951. Redesignated at 61 FR 57289, Nov. 6, 1996]

§ 250.401 Director serving member bank and closed-end investment company being organized.

(a) The Board has previously expressed the opinion (§218.101) that section 32 of the Banking Act of 1933 (12 U.S.C. 78) is applicable to a director of a member bank serving as a director of an open-end investment company, because the more or less continued process of redemption of the stock issued by such company makes the issuance and sale of its stock essential to the maintenance of the company's size and to the continuance of operations, with the result that the issuance and sale of its stock constitutes one of the primary activities of such a company. The

Board also stated that if the company had ceased to issue or offer any of its stock for sale, the company would not be engaged in the issuance or distribution of its stock and therefore the prohibitions of section 32 would not be applicable. Subsequently, the Board expressed the opinion that section 32 would not be applicable in the case of a closed-end investment company.

(b) The Board has recently stated that it believed that a closed-end company which was in process of organization and was actively engaged in issuing and selling its shares was in the same position relative to section 32 as an open-end company, and that the section would be applicable while this activity continued.

[25 FR 3464, Apr. 21, 1960. Redesignated at 61 FR 57289, Nov. 6, 1996]

§ 250.402 Service as officer, director, or employee of licensee corporation under the Small Business Investment Act of 1958.

(a) The Board of Governors has been requested to express an opinion whether §218.1 would prohibit an officer, director, or employee of a member bank from serving at the same time as an officer, director, or employee of a Licensee corporation under the Small Business Investment Act of 1958 (15 U.S.C. 661 *et seq.*). It is understood that a Licensee would be authorized to engage only in the activities set forth in the statute, namely, to provide capital and long-term loan funds to small business concerns.

(b) In the opinion of the Board, a corporation engaged exclusively in the enumerated activities would not be "primarily engaged in the issue, flotation, underwriting, public sale, or distribution, at wholesale or retail, or through syndicate participation, of stocks, bonds, or other similar securities." Accordingly, the prohibition of §218.1 would not apply to serving as an officer, director, or employee of either a small business investment company organized under the Small Business Investment Act of 1958, or an investment company chartered under the laws of a